IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, Treasurer,
Petitioner,

vs.

THE TEXAS COMPANY (P. R.), INC.,
Respondent.

REPLY BRIEF FOR PETITIONER ON WRIT OF CERTIORARI

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

ENRIQUE CAMPOS DEL TORO,
Acting Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

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I

Petitioner in reply to the "Brief for the Respondent, On writ of certiorari", desires to rely on what is said in Petitioner's Reply Brief heretofore filed herein in reply to respondent's brief in opposition ["Reply Brief for Petitioner, In Reply to Respondent's Brief in Opposition"]; and accordingly requests that that brief may stand and be considered as a brief [or as a portion of the brief] for petitioner in reply to respondent's brief on the writ of certiorari.

Supplementing what is said in that former reply brief, petitioner desires to add the following:

II

Respondent in its present brief "On writ of Certiorari" again *repeats* ["Facts", Respondent's Brief pp. 2-4 and following] *its unwarranted assumptions* that:

(1) *"All of the laborers employed by respondent at that time were insured"* [i.e., in February, 1926, at the time the deaths occurred]; (2) That *"respondent had complied with all the requirements of said Act necessary to render it an insured employer"*; (3) That it *"had paid the required premiums"* [i.e., *had paid them prior to* the accident and the deaths of these laborers on February 12, 1926]; (4) [By inference, Brief, p. 3], that the Supreme Court of Puerto Rico affirmed the dismissal of respondent's former petition for certiorari *on the sole ground* that certiorari under the Puerto Rican Code "applied to review the actions of courts only and not of administrative bodies"[1]; (5) That by the stipulation on which the case was tried (R. 12-13) petitioner had *"confessed"* respondent's *conclusion* [of fact or of law] that it was an *"insured employer"*, and that (*Brief*, p. 6 and elsewhere) *"it cannot be disputed that respondent was an insured employer"*; (6) That petitioner should have set up by answer in the District Court the fact that respondent was not actually an "insured employer"[2]; and (7) That (*Brief*, p. 11 and elsewhere) *"no such point of pleading was made"* by petitioner in the insular courts [*i.e.*, that the complaint failed to state facts sufficient to show that respondent actually was an "insured

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[1] The bill of complaint alleges only that the "Three classical certioraris numbered * * * were dismissed by judgments entered on July 23, 1928, because of lack of jurisdiction" (Par. 7, R. 3),—without any further limiting statement as to the grounds of the dismissal.

[2] Despite the fact that this was respondent's bill for an injunction, and that defendant-petitioner was standing on his demurrer on the ground, among others, that the complaint failed to state facts sufficient to constitute a cause of action, in view of its failure to allege the essential facts necessary to show that respondent actually was an "insured employer" [but relied instead on its asseverations of the pleader's *conclusions*].

employer"], but was raised for the first time in the Circuit Court of Appeals.

Petitioner has already answered all of these erroneous assumptions, in his Petition for Certiorari and Supporting Brief, and his Reply Brief in reply to respondent's brief in opposition to the Petition; all of which respondent apparently ignores.

III

In view of respondent's (wholly unwarranted) *repeated assertions* that petitioner, by the stipulation upon which the case was tried (R. 12-13), has "confessed" as a "fact" that the respondent was "an insured employer" at the time of the accident and the deaths of these men, and that the petitioner did not raise any question on that score in the insular courts, attention is invited to what was said on that score by the Supreme Court of Puerto Rico (*Opinion*, R. 29-30):

> "As plaintiff repeatedly insists in its brief that defendant confessed its status as insured employer as well as the illegality of the orders of the Commission, the execution of which it prays first to be enjoined and then set aside by virtue of the injunction, it is proper to state that this is denied by defendant in its brief as follows:
>
> " ' " ' . . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded; and to the contrary, there exists an official order of the Workmen's Relief Commission to the effect that this employer, because of its non-insured status should pay the compensation awarded to the insured workmen.
>
> " 'Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the orders of the Workmen's Relief Commission of April

24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

> 'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'
>
> "'It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.
>
> "'As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:' (Same as in the stipulation.)"

"Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court.

"This point thus clarified, we find an order issued by the Workmen's Relief Commission on April 24th, 1928 awarding compensation to the dependants of the deceased workmen, which was to be paid by plaintiff because, as declared by the Commission, it was not an insured employer."

It is manifest that not only was the question raised in the insular courts, but it was decided there, adversely to respondent's contention.

IV

Respondent says (*Brief*, p. 11) that the respondent-company's failure to comply with the requirements of

Section 13 of the Workmen's Compensation Act of Puerto Rico as amended by the Act of September 1, 1925 (*Appendix to our Petition*, pp. 36-38), particularly in regard to the requirements of the statute as amended on that date [five months before the accident], of *actual payment of the premiums* before becoming an "insured employer" and *of additional statements and payment of premiums in regard to workmen employed for "less than a semester"*, should have been set up by the Treasurer-petitioner by way of answer in the District Court; and could not be relied upon by way of demurrer to the complaint. In support of that contention respondent says (Brief, p. 11) that:

> "It is a recognized rule of pleading that where a party relies upon a statute containing a general clause followed by an exception or proviso in a subsequent substantive clause, such exception is a matter of defense and need not be negatived."

And in support of that contention respondent cites *McKelvey* vs. *United States*, 260 U. S. 353, 357, and earlier cases.

But respondent overlooks:

(1) That this is not a case of "a statute containing a general clause followed by an exception" or by a "*proviso*" in the sense of an exception, such as that to which the rule relates, as laid down in the cases which respondent cites. The provisions in Section 13 of this Puerto Rican Workmen's Compensation Act, as amended on September 1, 1925 (*Appendix to our Petition*, pp. 35-38, *supra*), are *not at all in the nature of exceptions* to the general requirements of the statute; but, on the contrary, *are additional requirements*, or *parts of the sum of the total requirements*, in order that an employer may become an "insured employer" under the statute. Until he has complied with all of those require-

ments, he has not become an "insured employer". And consequently, in undertaking to allege, in accordance with the requirements of Section 103 of the Code of Civil Procedure of Puerto Rico, "A statement of the facts constituting the cause of action"[3], the plaintiff must necessarily allege compliance with all of this bundle of requirements, all of which together make up his cause of action, and each of which is as essential to it as any other of them.

While the statute employs the word *"provided"* (Petition, Appendix, p. 36, *supra*) in introducing the requirements concerning the additional statements required for men employed for less than a "semester", yet that word is there employed, not at all in the sense of introducing an exception to the generality of the preceding requirement; but, instead, in the sense of *"And further"*, or *"And also"*, or *"And in addition"*, in order to introduce a further additional requirement standing on the same footing as the requirement stated in the preceding clause. The use of the word *"Provided"* in this place in the statute is really a somewhat inaccurate use of the word.

(2) This is not a complaint founded upon the statute. It is, on the contrary, in effect a suit to enjoin the execution of a judgment,—of the administrative order of the Workmen's Relief Commission after full hearing, finding the amount of the compensation and charging it against this corporation-respondent under Sections 7 and 20 of the Act as amended September 1, 1925 (*Petition, Appendix*, pp. 34-35, 39-40); an order which the

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[3] Code of Civil Procedure of Puerto Rico (Edition of 1933), Sec. 103, p. 41:

"Section 103.—(426 Cal.) The complaint must contain: • • •

2. A statement of the facts constituting the cause of action, in ordinary and concise language."

Supreme Court of Puerto Rico holds to be (*Opinion Denying Reconsideration*, R. 51):

> "a final order handed by certain administrative organism in the exercise of its authority after due consideration of the facts and of the law, with a hearing or opportunity of a hearing to the interested parties, and against which recourse could have been taken to the courts of justice.[4] By it certain person or entity is sentenced to pay a certain sum of money. And by both laws it is sent to the treasurer for its execution".

Failing to avail itself of its right to appeal, the corporation seeks to enjoin the execution of the order. Manifestly its complaint, in order to contain "a statement of the facts constituting the cause of action" must set up all the facts necessary to show that the order was not only erroneous but was beyond the jurisdiction of the Commission. In regard to the particular question here raised by this corporation of its being an "insured employer" it must allege all the elements required by the statute to make it an "insured employer"; which it has not done.

(3) This question of pleading and procedure under the local statute, the Code of Civil Procedure of Puerto Rico, *is peculiarly one of those questions*, which, under the established rule of this Court, is *within the sphere of the local Territorial court of last resort*, the Supreme Court of Puerto Rico, *upon which its decision is not to be disturbed unless "clearly erroneous"*. *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Co.*, 306 U. S. 505, 509-511; *Diaz* vs. *Gonzalez*, 261 U. S. 102, 105, 106; and other cases cited in the footnotes to the *Yabucoa Sugar Co.* case (306 U. S. at pp. 509-510), and in our original Petition here (pp. 4-5) and Supporting Brief (p. 24).

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[4] *I.e.*, by direct appeal under Section 9 of the Act.

The insular Supreme Court held the corporation's complaint insufficient.

V

Respondent says (*Brief, Point* III, p. 16 *et seq.*) that the construction of Section 9 of the Act as amended by the Act of September 1, 1925 "is not determinative of this case, as respondent had no reason to appeal under that section even if it could have done so".

A. *Respondent here expressly admits* (*Brief*, p. 17) that the decision of the Circuit Court of Appeals was erroneous on the primary point in this case, upon which the entire reasoning and decision of the opinion of the Circuit Court of Appeals really hangs, *viz.*, in its construction of Section 9 of the Act [*Opinion, C. C. A.*; R. 62-64] as not permitting any appeal to the employer in a case where the Commission had held that the employer was "uninsured" and therefore that the compensation was payable by him, instead of out of the "Government Trust Fund". *That is the primary question upon which the Circuit Court of Appeals overruled the Territorial Supreme Court and reversed its decision.* [*Petition for Certiorari*, 2-3; *Supporting Brief, Point I*, pp. 17-23] The Territorial Supreme Court had held that the employer was entitled to an unrestricted appeal in any case where the decision of the Commission "is to the effect that the accident is one for which compensation is granted under this Act" (Sec. 9 of the Act), *regardless* of whether the Commission had found that the employer was an "insured employer" and hence that the compensation was payable out of the "Government Trust Fund" under Section 2 of the Act, or had found that the employer was an "uninsured employer" and hence that the compensation was payable by him under Sections 7 and 20 of the Act. **The respondent now expressly admits that the insular Supreme Court was right on this primary**

question in the case, and that the Circuit Court of Appeals was in error. Respondent now says (Brief, p. 17):

> "The construction of Section 9 of the 1925 Act as permitting only insured employers to appeal originated with the Circuit Court of Appeals itself. *Respondent has never contended that Section 9 should be so construed*". (*Italics supplied*)

B. Respondent now says that its position is (Brief, p. 17):

> "It is respondent's position that although both insured and uninsured employers could appeal under Section 9 of the 1925 Act (while that Act was in effect), *the sole matter which could be adjudicated on such an appeal was the question whether the employee was entitled to compensation* (a matter never disputed in this litigation), and not the issue of whether the compensation was to be paid out of the State Fund or collected from the employer". (*Italics supplied*)

This is a reversion to the position taken on this point by the respondent corporation as appellant in the Circuit Court of Appeals ("Brief for Appellant, The Texas Company (P. R.) Inc.", pp. 10-12; certified copy on file here in this case). It was [*correctly*] ignored by the Circuit Court of Appeals and, in effect, overruled; as it had been by the insular Supreme Court.

This contention now made by respondent, is, in effect, that, since the jurisdiction of the insular District Court to entertain the employer's appeal under Section 9 of the Act is limited to those cases in which (Sec. 9; *Petition, Appendix*, p. 35) the decision of the Commission

> "is to the effect that the accident is one for which compensation is granted under this Act",

therefore *that one single question*, which is the basis of the jurisdiction for the appeal, *is the only question which can be considered or adjudicated on the appeal* to the

District Court (or by the insular Supreme Court on appeal to it from the insular District Court), viz., *whether or not the accident actually is* "one for which compensation is granted under this Act".

The contention seems really frivolous. Respondent cites no authority in support of it. On that theory it would follow, for example, that since the right of appeal from the Supreme Court of Puerto Rico to the Circuit Court of Appeals is dependent upon "the Constitution or a statute or treaty of the United States or any authority exercised thereunder" being involved, or else "the value in controversy, exclusive of interests and costs" exceeding $5,000, or the case being "*habeas corpus* proceedings" [Judicial Code, Sec. 128(a), "Fourth", as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936], therefore, on any appeal to the Circuit Court of Appeals from the insular Supreme Court, *the only question open to consideration or adjudication in the Circuit Court of Appeals would be the single question* of whether a Constitutional or federal question was involved in the case, or of whether the amount involved exceeded $5,000, or of whether the proceeding was really a *habeas corpus* proceeding, as the case might be; *and that no other question could be considered on the appeal.*

Of course that was not the intention of the Legislature in allowing the employer an appeal under Section 9 in any case where the Commission found that the accident was one for which compensation was granted under the Act. The Legislature did not intend to do a vain or useless thing. Of course, consequently, the insular Supreme Court was right in considering the appeal "a general appeal" [Opinion denying this respondent's certiorari, *Texas Co.* vs. *Workmen's Relief Commission*, 40 P. R. Rep. 456, 458, bottom of the page, quoted with approval, and followed in its opinion in the present case, R. 32].

C. Consequently there is no point at all to respondent's contention here (Brief, p. 15, *supra*) that the respondent "had no reason to appeal" under that section,—at least in so far as this question is concerned of the effective scope of the appeal, if it had availed itself of it. Clearly, it would have been "a general appeal", as the insular Supreme Court terms it (R. 32, *supra*), upon which the corporation could have had a trial *de novo*.

D. In so far as the other branch of the respondent's contention under this point of its brief is concerned,—and upon which the Circuit Court of Appeals held with it (R. 63 *et seq.*),—that under Section 7 of the Act of 1925 (*Petition, Appendix*, p. 34) upon the insular Attorney General's action to collect the compensation awarded by the Commission and charged to the "uninsured employer" under Sections 7 and 20 of the Act, the employer could in that action re-litigate the liability found by the Commission, and could in effect have a trial *de novo*, and could then open up again all the questions already determined by the Commission, including the question of whether or not it was "uninsured", with like effect substantially, for all purposes, as upon the direct appeal from the Commission's order, under Section 9,—*that contention has already been answered* in our Brief in Reply to Respondent's Brief in Opposition, ("III", pp. 7-11), as well as in our brief in support of our petition (Supporting Brief, Point V, pp. 27-28).

As there pointed out, an attempt to reopen the Commission's final order by a rehearing *de novo*, by way of defense to the action to collect the award, *would be just as much an attempt at a collateral attack upon it*, as is this collateral attack by way of injunction, or as was the collateral attack by way of certiorari, denied by the insular courts.

There is nothing to the contrary in what was said by MR. JUSTICE BRANDEIS in the opinion of this Court, relied upon by respondent (*Brief*, pp. 21-22) in *Ohio* vs. *Chattanooga Boiler Co.*, 239 U. S. 439, 440. In that case this Court simply accepted the construction placed by the Ohio Supreme Court upon the particular Ohio statute there in question, citing the Ohio decisions [*Fassig* vs. *State*, 95 Ohio St., 232, 242, and others], as providing that, under that particular statute, the employer was entitled to challenge in an action for reimbursement the correctness of the award in all respects save the amount of compensation. This Court simply accepted, without discussion (289 U. S. at pp. 440-441), the decisions of the Ohio Supreme Court as to the construction of that Ohio statute. That has nothing to do with this case. The Puerto Rico statute of 1925, here involved, contains no such provision.[5]

To countenance such a collateral attack on the Commission's order would be, as this court said in *Crowell* vs. *Benson*, 285 U. S. 22, 46-47 (quoted more at length in our "Reply Brief for Petitioner in reply to Respondent's Brief in Opposition", p. 6),

> "to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method of dealing with a class of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task. * * * *and the efficacy of the plan depends upon the finality of the determinations* * *." (*Italics supplied*)

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[5] "*The Ohio law does not provide for review of an award by an appeal;* but the employer is entitled to challenge, in an action for reimbursement, the correctness of the award in all respects save the amount of compensation. (*Ohio* vs. *Chattanooga Boiler Co., supra*, 289 U. S. 439, 440-441; *italics supplied*).

That is the [*narrower*] Ohio statutory substitute for the unrestricted "general appeal" allowed the employer by Section 9 of the Puerto Rico law.

VI

The other questions raised by the respondent are already answered in our Petition and Supporting Brief and in our former "Reply Brief in Reply to Respondent's Brief in Opposition", which latter, as first above stated, it is requested may stand and be considered, in connection with this brief, as the Reply Brief for Petitioner in Reply to Respondent's Brief on Certiorari.

CONCLUSION

As hereinbefore indicated in this brief, as well as in our Petition for Certiorari and Supporting Brief, and our Reply to Respondent's Brief in Opposition, the decision of the insular Supreme Court of Puerto Rico rested, on the controlling questions here presented, upon its interpretation of local statutes and of local procedure under them. This is therefore peculiarly a case for the application of the established rule of this Court as to the respect to be accorded to decisions of the Territorial Supreme Court under such circumstances. Its decision was clearly right; and the Circuit Court of Appeals was wrong in overruling it. The judgment of the Circuit Court of Appeals should, therefore, be reversed, and that of the Supreme Court of Puerto Rico affirmed.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

ENRIQUE CAMPOS DEL TORO,
Acting Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.